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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

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To: Joint Board

COMMENTS OF THE INTERACTIVE SERVICES ASSOCIATION

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SUMMARY

The universal service provisions of the Telecommunications Act of 1996 require the Commission to adopt rules eliminating massive cross-service subsidies in favor of a new, narrowly targeted subsidy system. Among other things, the Commission must define the specific services it wants to subsidize, and it must develop mechanisms to levy a surcharge on providers of telecommunications service to support the new subsidy program.

These comments demonstrate that the 1996 Act prohibits the Commission from including those who provide online and Internet access services within the group on whom the new universal service surcharge is levied. Excluding this group is not only required by law, it follows from considerations of fundamental fairness. Because the surcharge will be levied on the underlying telecommunications services upon which online and Internet access services are founded, most, if not all, of these surcharges will be passed along to online and Internet access providers. Thus, these industries already will contribute their fair share towards the advancement and preservation of universal service.

These comments also show that the 1996 Act requires the Commission to repeal its carrier common line charge. Although this charge, which is imposed on those who subscribe to interstate access service, was designed to recover nontraffic-sensitive local exchange carrier costs, it has the effect of benefitting a class of telecommunications users -- low-usage interstate service customers -- who are outside the classes that the 1996 Act authorizes the Commission to subsidize.

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COMMENTS OF THE INTERACTIVE SERVICES ASSOCIATION

The Interactive Services Association (ISA), hereby submits these comments in response to the Notice of Proposed Rulemaking and Order Establishing Joint Board in the above-captioned proceeding which was released on March 8, 1996.^{1/}

INTRODUCTION

The ISA, formed in 1981, is the leading association devoted exclusively to promoting consumer interactive services worldwide. The ISA has approximately 350 members from a variety of industries, including online, Internet access, advertising, cable TV, computer hardware and software, consumer electronics, financial services, magazine and newspaper publishing, and telephony. These comments focus on the activities of the two largest components of ISA's membership: online service providers and Internet access providers.

^{1/} The dates for filing comments in this proceeding were extended to April 12, 1996 by an Order (DA 96-483) released by the Common Carrier Bureau on April 1, 1996.

A. Online Service Providers

Online service providers make information and information services available interactively for a fee to remote users. The operation of online services is based on a client-server model. The user, or "client," makes a request for information or services from a host, or "server." The server processes the request and delivers the requested information to the client or connects the client to the requested information service application. These client-server transactions take place electronically, generally between computers, but sometimes between computers and terminal equipment like telephones or televisions.

The client-server model used in providing online services makes it possible for the online provider to afford remote users access to vast amounts of information in a variety of formats, including data bases, bulletin boards, library catalogs, news, and software. With the client-server model, online services also permit information to flow from the client to the server. Examples include users' postings to newsgroups, electronic mail ("e-mail") transmissions, and sending account or billing information for commercial transactions consummated on line.

The client-server model on which online service is based contrasts with the peer-to-peer model on which telecommunications service is based. While computers also are used in the provision of telecommunications service, a telecommunications service computer operates as a switch that controls the flow of information between users and does not affect the content of user-supplied information.

Broadly speaking, there are two types of online service providers. First, there are large integrated online information services -- like America Online, CompuServe, Prodigy, and the Microsoft Network -- which provide a large variety of interactive information and entertainment capabilities to their subscribers. These companies generally offer multi-featured service on a price-bundled basis rather than breaking out individual functions or transactions for separate

billing. They do this by charging a fixed monthly fee that entitles the subscriber to a certain number of hours of use regardless of what activity the subscriber engages in while using the online service. The subscriber pays for any additional usage by paying an incremental fee for each additional hour of usage beyond the monthly allotment.

Second, there are online service providers who offer narrowly targeted services, such as stock quotations, weather information, travel reservations, games, or transaction services such as e-mail and electronic data interchange (EDI). These companies generally charge a fee based on each transaction the subscriber enters into, rather than charging on an hourly basis. Some of these services appear as supplementary services on the online platforms operated by the multi-featured online companies. Many also are offered over the Internet.

B. Internet Access Providers

The Internet is a network of independently owned computer networks, all of which use common communications protocols for the exchange of information among computers. The component networks comprising the Internet are thousands of independently owned computers (or networks of computers) linked together by communications circuits paid for by the separate owners of these computers. These communications links permit people using any computer participating on the Internet to share documents and exchange messages. Some computers participating on the Internet are owned by private companies or individuals, some are owned by government agencies, and others by public institutions. The United States is only one of many countries in which computers participating on the Internet operate.

Internet access providers offer their subscribers a way to gain access to this global network. Access may take one of at least two forms. At the simplest level, access may consist of simply relaying the subscriber's keystrokes -- which need not originate on a computer -- over

a telephone line to a computer connected to the Internet. More advanced capabilities may be provided over a telephone line by communications protocols such as SLIP and PPP that effectively turn the subscriber's computer into a distinct Internet node.

While Internet access providers charge fees based on a mixture of flat rate and hourly usage, neither the Internet access provider nor anyone else charges a fee to use the Internet itself. Instead, the fee that an Internet access provider charges is for the protocol conversions and storage space required to grant access to and make use of the Internet's internetworking protocols.

For example, when an Internet access provider offers e-mail capability to its customers, this capability may originate in one of two different ways, depending on the type of access. First, the Internet access provider may provide a "mailbox," consisting of some message storage space and a personalized address, along with software to compose, send and receive messages, all operating on a computer controlled by the Internet access provider. Alternatively, the user can supply the message storage space and software (often distributed at no charge by the Internet access provider) on his or her own computer. In either case, however, the service the Internet access provider offers is the extension to the user of the common Internet communications protocols, operating over normal telecommunications links; the Internet itself performs the routing and delivery of e-mail messages.

Similarly, Internet access providers may offer access to the World-Wide Web, the interactive graphics capability that exists within the Internet. Access to the World-Wide Web is offered by combining the Internet communications protocols with "browsing" software capable of translating instructions stored on various computers into images on the user's screen.

While the charge levied by an Internet access provider is for access to the global Internet rather than a charge which permits the Internet user to take advantage of any function the

subscriber performs while using the Internet, hundreds (or perhaps thousands) of entities do provide a wide variety of functions over the Internet for a fee. For example, some companies allow Internet users to access stock quotations and other up-to-the-minute information for either a monthly subscription fee or a separate fee for each download. Others offer the ability to make travel reservations, play games, or engage in catalog shopping. In order to take advantage of one of these commercial offerings, Internet users typically provide a credit card number to the Internet service provider whose service they desire to use.

DISCUSSION

I. Neither Online Service Providers Nor Internet Access Providers Are Telecommunications Carriers or Other Providers of Interstate Telecommunications Upon Whom Section 254 Permits a Universal Service Surcharge to be Levied.

The Telecommunications Act of 1996 ("1996 Act")^{2/} mandates that the Federal Communications Commission ("FCC" or "Commission") levy a surcharge on "[e]very telecommunications carrier that provides interstate telecommunications services" in order to subsidize the price of certain other services.^{3/} In addition, the 1996 Act gives the Commission discretion to require a contribution from anyone who is a "provider of interstate telecommunications" but not a "provide[r] of interstate telecommunication services."^{4/} As discussed below,

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et. seq.). Each provision of the 1996 Act will be referred to in these Comments by the section number of the Communications Act where it is codified rather than by its section number in the 1996 Act.

^{3/} 1996 Act § 254(d). The Commission may exempt certain carriers or classes of carriers from this requirement if the administrative cost of assessment and collection would exceed these carriers' contributions. See S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 131 (1996).

^{4/} 1996 Act § 254(d).

the Commission may not lawfully require contributions from online service providers or Internet access providers under either of these provisions.

A. While the 1996 Act Requires Those Providing "Telecommunications Services" to Contribute to Universal Service, Neither Online Service Nor Internet Access Service is a "Telecommunications Service."

1. Online Service and Internet Access Service Meet None of the Three Tests a Service Must Meet In Order to be a "Telecommunications Service."

Definitions in the 1996 Act make clear that online and Internet access services are not telecommunications services. The term "telecommunications service" is defined as "the offering of telecommunications for a fee."^{5/} "Telecommunications," in turn, is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."^{6/} Reading these definitions together, it is plain that a service is a telecommunications service only if it meets each of three separate requirements: (1) it must involve the transmission of information of the user's choosing; (2) the transmission of this information must be between points specified by the user; and (3) the transmission must be such that neither the form nor content of the transmitted information is changed. Neither online nor Internet access service meets any of these three requirements.

a. **Online Service.** Online service is not a service that enables users to transmit information of their own choosing. Instead, the essence of online service is the

^{5/} Id. § 153(46).

^{6/} Id. § 153(43).

interactive storage, retrieval, and processing of information through electronic means.^{7/} It is true that telecommunications is part of the online medium in that the information must get from the online service provider to the user (or vice-versa) in order to be useful. Thus, the user is connected to the online service provider through a transmission link, which is most often a telephone line. But the fact that a company providing online service, like many other businesses, uses telecommunications links as an input does not transform the business itself into a telecommunications service.

Nor does online service meet the second requirement -- that the information be transmitted between or among points specified by the user. Online service permits the user to choose one point -- the location of the user's terminal or computer where information is transmitted or received -- but the company providing online service chooses the other point. For example, a user who retrieves stock quotes, or reads a newsgroup, or downloads a computer program takes that information from wherever it resides in the online service provider's database, not from a point of his or her own choosing. E-mail and chat messages are not transmitted directly from one user to another; both require intermediate storage, and neither the sender nor the recipient chooses the point or points at which any given message is stored. These examples reflect the fundamental difference between online services and telecommunications services: online services operate on a client-server model, whereas telecommunications services operate on a peer-to-peer model.^{8/}

Online service offerings also do not meet the third requirement of a telecommunications service -- that there be no change in the form or content of the information transmitted. The

^{7/} See supra pp. 2-3.

^{8/} See supra p.2.

information provided by an online service is nearly always altered in some way. For example, documents and files are stored in online data bases in compressed form -- to make the best use of available storage space -- and are expanded or uncompressed for delivery to the user. The recipient of an e-mail message likewise sees the message in a different form than that in which it was sent: words wrap at different points on the line, lines are combined in different ways into screens, and most significantly, header information is placed on the message indicating the identity of the sender, the time it was sent and received, and giving information about the gateways through which the message has passed.^{2/}

b. **Internet Access Service.** For reasons similar to those that apply to online service, Internet access service is not telecommunications service either. First, Internet access service is not a service that permits transmission of information of the user's choosing as the first test requires. Instead, companies providing Internet access service provide their subscribers with computer storage capacity and Internet communications protocols, which can be thought of as a kind of information that only computers can understand and use. While this information must be transmitted to the user in order to be of value, the information itself -- the Internet communications protocols, and not what the user chooses to transmit with them -- is what an Internet access provider offers.

Nor is the information provided by an Internet access provider offered between points of the user's choosing. Just as with online service, Internet access service operates on a client-server model. The user may choose the client end of the communications path but has no choice about the server end. Once a subscriber to Internet access service has connected to the Internet,

^{2/} See Armstrong v. Executive Office of the President, 1 F.3d 1274, 1285 (D.C. Cir. 1993) (holding that e-mail communicates far more than simply the text of the message; the header information may potentially be "of tremendous historical value"; without these headers e-mail records are "dismembered documents indeed.")

the subscriber can use the Internet protocols that the access provider offers to "telnet" or "ftp" to a specific host computer -- arguably a point of the user's choosing^{10/} -- but this capability to communicate with Internet host computers is inherent in the Internet network itself; it is not a service provided by the Internet access provider.

Finally, transmissions between the user and the Internet access provider are not such that the form or content of the information is unchanged. Information on the Internet is stored in as many different formats as there are kinds of computers. Exchanging text files between all these different computers requires conversion into different forms. Thus, the "ftp" program -- the basic method of moving file-structured information over the Internet -- must perform end-to-end conversion of text files between client and server.^{11/} Moreover, every computer sees information on the World-Wide Web in different form, and sometimes with different content. On the World-Wide Web, the information for each "home page" is stored as directives in hypertext mark-up language (HTML) and interpreted according to the graphics and text capabilities of the computer on which it is viewed. This results in very different views of the same home page by different users.

^{10/} Even this choice may be illusory, in that successive "ftp" requests to a particular address may result in connections to different computers, at different physical locations, each time.

^{11/} Under the Commission's basic/enhanced service distinction, a service that performs an end-to-end protocol conversion is enhanced. See Amendment of Section 64.702 of the Commission's Rules and Regulations, Report and Order, 2 FCC Rcd 3072, ¶ 69 (1987). Thus, in addition, when an Internet service provider offers asynchronous access, data enters by keystrokes and exits in Internet TCP/IP packets, making the service enhanced. See Petitions for Waiver of Section 64.702 of the Commission's Rules, Memorandum Opinion and Order, 100 F.C.C.2d 1057, 1066-67 (1985). The 1996 Act does not require the Commission to eliminate the basic/enhanced paradigm; indeed, its elimination would upset longstanding regulatory expectations. See infra p. 12.

2. The 1996 Act's Use of the Terms "Information Service" and "Interactive Computer Service" to Describe the Offerings of Online Service Providers and Internet Access Providers Demonstrates that Congress Did Not Intend These Offerings to Be Classified as Telecommunications Services.

The plain wording of another part of Section 254 provides additional evidence that the services offered by online service providers and Internet access providers are not telecommunications services. While Section 254 gives the FCC authority to levy a surcharge only on those who provide "telecommunications services," the same provision authorizes the Commission to give the proceeds of these surcharges to those who provide either "telecommunications services" or "information services."^{12/} If Congress had intended to authorize the Commission to impose a surcharge on those who provide information service as well as those who provide telecommunications service, it would have said so given the fact that the same section makes plain that the proceeds from surcharges can be used to benefit both industries.

The service offered by the online and Internet access industries clearly is an information service. The 1996 Act defines "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."^{13/} Functions provided by online services -- like news retrieval and stock quotations -- offer the capability of acquiring, retrieving, or making available information via telecommunications. Other functions offered as part of online service -- such as chat, bulletin boards, e-mail and EDI -- provide the capability of generating, processing, storing, and retrieving information via telecommunications. The protocol conversion capability provided by Internet access service likewise constitute an information service because

^{12/} See 1996 Act §§ 254(b)(2), (b)(3), and (h)(2)(A).

^{13/} Id. § 153(20).

this capability provides the means to process and transform information via telecommunications for use by the Internet.^{14/}

3. Sound Public Policy Dictates that the Commission Exempt Online and Internet Access Services from the Definition of "Telecommunications Service."

Even if the 1996 Act left open for debate whether online and Internet access services should be classified as "telecommunications service" (which it does not) sound public policy would dictate that the Commission resolve any ambiguity against bringing these services within that definition. First, imposing a surcharge on these services on the theory that they are telecommunications services would have the unfair effect of "taxing" these services twice. This is because online and Internet access service providers obtain the transmission facilities they require in order to provide service by subscribing to telecommunications services offered by common carriers. Each common carrier who provides these services presumably will be required to contribute to the new universal service mechanisms; and most, if not all, of these

^{14/} Courts agree that the services provided by the online and Internet access industries are information services. In 1987, the U.S. District Court for the District of Columbia held that the service provided by these industries are "information services" as that term was used in the AT&T consent decree. United States v. American Tel. and Tel. Co., 673 F. Supp. 525 (D.C.C. 1987), clarified, 714 F. Supp. 1 (D.D.C. 1987). The definition of "information service" in that decree was identical to the definition in the 1996 Act. See United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 229 (D.C.C. 1982).

Section 223(e) of the Act provides even further evidence of Congress' intention not to include the services provided by the online and Internet access industries within the definition of telecommunications service. By its terms, Section 223(e) states that Congress does not intend "to treat interactive computer services as common carriers or as telecommunications carriers." An interactive computer service is defined as "any information service, system, or access software provider that provides or enables access by multiple users to a computer server, including specifically a service or system that provides access to the Internet" 1996 Act § 230(e)(2). Online and Internet access services obviously are "interactive computer service" since they are "information services" as shown above, enable access by multiple users to a computer server, and provide access to the Internet.

contributions will be passed along to online and Internet access service providers in the price those service providers pay for the telecommunications services to which they subscribe.

Second, government officials of all kinds -- including the President, the Vice President, Members of Congress, and the FCC Chairman himself -- have made plain their view that government policy should be designed to facilitate the rapid growth of the online and Internet access industries.^{15/} Yet a government policy that levies a surcharge on the price consumers must pay to obtain the service these industries provide would have precisely the opposite effect.

Third, a decision by the FCC that online and Internet access services are subject to the new universal service surcharge on the theory that they are telecommunications services would undermine the longstanding regulatory distinction made by the Commission between "basic service" and "enhanced service." Under that paradigm, basic services are treated as common carrier services and thus are subject to Title II of the Communications Act. By contrast, all interstate enhanced services are free of Title II regulations because all such services are treated by the Commission as non-common carrier offerings. Online and Internet access services are enhanced services under the basic/enhanced dichotomy. A decision by the Commission to levy a universal service surcharge on the online and Internet access industries would upset the basic/enhanced paradigm because Section 153(44) of the 1996 Act requires the FCC to treat all telecommunications services as common carrier services for purposes of Title II.^{16/}

Finally, subjecting commercial online service providers to the universal service surcharge on the theory that they provide telecommunications service would be administratively infeasible. If the online offerings of companies like America Online, CompuServe, Prodigy, and the

^{15/} See, e.g., Remarks by the President on Education Technology Initiative (Feb. 15, 1996); President's Message to Congress on Science and Technology (Mar. 31, 1995).

^{16/} 1996 Act § 153(44).

Microsoft Network are telecommunications services, then the online offerings of the hundreds -- or more likely thousands -- of companies that provide similar offerings on the Internet for a fee also would be subject to the surcharge. Yet subjecting these companies to a universal service surcharge would be impractical. For example, it would be nearly impossible for the Commission to identify these companies with any certainty because service providers on the Internet change so rapidly. Even if they could be identified, there would be massive jurisdictional problems in determining on what portion of their revenues to levy the surcharge because many Internet service providers are located outside the United States. In addition, a substantial part of the revenues these companies generate, regardless of where they are located, comes from subscribers outside the United States.

B. The FCC May Not Lawfully Require Online Service Providers and Internet Access Providers to Contribute to Universal Service Under its Discretionary Authority.

Not only would it be unlawful for the FCC to impose on online and Internet access providers the surcharge Section 254(d) requires it to levy on everyone providing a telecommunications service, it also would be unlawful for the Commission to levy a surcharge on such companies based on discretion it has to impose the surcharge on those who provide interstate telecommunications as opposed to telecommunications service.^{17/}

The FCC's permissive authority to levy a universal service surcharge on those who "provide interstate telecommunications" (as opposed to those who provide interstate telecommunications service) originated in the telecommunications bill as it passed the Senate. The

^{17/} The 1996 Act mandates that the FCC levy a surcharge on every telecommunications carrier that provides interstate telecommunications service, and permits the FCC, in addition, to require contributions from the providers of interstate telecommunications. 1996 Act § 254(d).

Committee Report accompanying that bill explained that the purpose of this permissive authority is to make sure the FCC has jurisdiction to impose a surcharge in the limited situation in which "the use of private . . . networks becomes a significant means of bypassing networks operated by telecommunications carriers."^{18/} Such carrier bypass occurs when a large telecommunications user meets its need for telecommunications transmission capability by constructing a private transmission network (e.g., a private microwave network licensed under part 90 of the Rules) rather than by subscribing to a carrier's telecommunications service. By constructing a private network, that company "provides telecommunications" -- to itself -- though it obviously does not "provide telecommunications service" since it does not sell telecommunications to the public.

The Congressional decision to give the FCC permissive authority to levy a surcharge on those who bypass carrier-provided telecommunications service is not surprising given the longstanding concern that bypass could increase if uneconomic surcharges were levied on those who provide telecommunications service but not on large bypassers, and that increased bypass could cause telecommunication service to deteriorate. For example, in 1983 the FCC defended its decision to bring the price of one telecommunications service -- interstate access service -- closer to cost on the ground that it was necessary in order to reduce the incentive that otherwise would exist for large users to bypass this service:

^{18/} S. Rep. No. 23, 104th Cong. 1st Sess. 28 (1995). The House-passed version of the telecommunications bill permitted the FCC to impose a universal service surcharge only on those who provide "telecommunications service," rather than also giving the Commission jurisdiction to levy a surcharge on those who merely "provide telecommunications." See H.R. 1555, 104th Cong., 1st Sess. (1995) at § 101, adding new § 247(b)(4) to the Commun. Act ("All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation of universal service."). A service would be a "telecommunications service" under the House-passed bill only if it met each of the same three tests specified in the bill as enacted. Id. at §§ 501(48) and (50) (defining "telecommunications" and "telecommunications service," respectively).

The costs imposed upon the nation's telecommunications system, and ultimately upon the general public, by . . . [the FCC requirement that carriers overprice access service] pose a substantial danger to the long term viability of our nation's telephone systems. . . . As telecommunications plays a larger and larger role in fundamental U.S. industries, the problems resulting from inappropriate pricing [of carrier-provided access service] grow. . . . The possibility of users, particularly the nation's largest telecommunications users, abandoning the [carrier-provided telecommunications] network for less efficient alternatives, *i.e.*, "uneconomic bypass", has been cited by many participants as a major justification for the movement toward cost based customer access charges. Bypass is a growing phenomenon.^{19/}

The Commission's discretionary authority to levy a universal service surcharge on those who meet their need for telecommunications service through carrier bypass does not authorize the Commission to impose a surcharge on online and Internet access services since companies who provide those services do not engage in bypass. Instead, they obtain the vast majority of the transmission facilities they require in order to provide service by subscribing to carrier-provided telecommunications services. The telecommunications services to which they subscribe presumably will already include a universal service surcharge.

II. Both the 1996 Act and Sound Public Policy Require that the Commission Eliminate the Existing Requirement that Local Exchange Carriers Recover Certain Fixed Costs Through a Usage Based Carrier Common Line Charge.

Not only does the 1996 Act strictly limit the FCC's authority to levy a surcharge on telecommunications providers to support the new, narrowly targeted universal service mechanisms, Section 254 also indirectly requires that the Commission eliminate certain existing

^{19/} MTS and WATS Market Structure, Third Report and Order, 93 F.C.C.2d 241, 251-52 (1983). See also National Ass'n of Reg. Util. Comm'rs v. FCC, 737 F.2d 1095, 1116 (D.C. Cir. 1984) (FCC's conclusion that government-mandated uneconomic pricing of telecommunications service creates a perverse economic incentive for large users to bypass telecommunications service).

surcharges. Numerous existing regulatory policies require that telecommunications users overpay for the telecommunications services they use. For example, an online provider must pay for connections to local exchange facilities in an amount equal to the price of local telephone service for business customers even though state regulators typically require local business service to be overpriced in order to subsidize functionally identical residential service.^{20/} An online provider also must obtain interstate transmission service from interstate carriers under rate structures that permit those carriers to recover a number of uneconomic surcharges which regulatory policy requires them to pay. These surcharges include a charge to support the FCC's existing universal service fund for high cost local exchange carriers (LECs), a dial equipment minute weighting charge for small LECs, a long term support charge, and a variety of other non-cost based surcharges.^{21/}

Section 254 indirectly requires that the Commission eliminate certain existing surcharges by narrowly defining those whom the agency may lawfully subsidize. Whereas the Commission previously claimed broad authority to give the proceeds of its uneconomic surcharges to whomever it desired, Section 254 limits that authority by stating that no surcharge is lawful unless the proceeds are used to subsidize one of three classes of telecommunications customers, as follows: (1) all customers subscribing to a specific interstate service the Commission finds deserving of a subsidy; (2) customers in rural, insular, or high cost areas subscribing to a particular interstate service the Commission believes should be subsidized in those areas to ensure its availability at a price reasonably comparable to the price at which it is offered elsewhere; and (3) low income consumers, health care providers, schools, and libraries

^{20/} 47 C.F.R. §§ 69.194(e), 69.203(a).

^{21/} See 47 C.F.R. §§ 69.116 (universal service fund), 36.125 (DEM weighting), 69.612 (long term support), 69.117 (Lifeline/Link-Up).

subscribing to a particular interstate service the Commission finds deserving of subsidization in order to ensure availability to those particular consumers at an affordable price.^{22/}

LECs recover a portion of their interstate nontraffic-sensitive costs through a CCL charge paid by interstate carriers for access to LEC facilities. These residual nontraffic-sensitive costs arose out of the FCC's desire to ensure that the access charge regime protect the goal of universal service.^{23/} However, the CCL charge is unlawful under the 1996 Act since it has the effect of subsidizing a class of customers outside of the class that Section 254 authorizes the Commission to subsidize. Rather than being an assessment that subsidizes a particular service, or a customer living in a rural or high cost or insular area, or a customer who is low income or is a health care provider or a school or library, the CCL charge instead has the effect of subsidizing the interstate telephone bills of those who make fewer than the average number of interstate telephone calls.^{24/} The FCC's own staff has noted that the CCL charge forces "low

^{22/} Limiting subsidy beneficiaries to narrowly defined groups not only is required by the plain wording of Section 254, it also is consistent with the overriding purpose of the entire 1996 Act. In a host of ways, the Act seeks "to provide for a procompetitive, deregulatory national policy framework." H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 1 (1996). The Act does this not only by requiring the Commission to permit telecommunications service providers to price service more rationally as Section 254 mandates but also by removing barriers to entry, mandating regulatory forbearance, and eliminating micromanagement of the telecommunications industry. See, e.g., 1996 Act § 253 (1996) (removing barriers to entry); Id. §§ 10, 11 (1996) (requiring regulatory forbearance); 141 Cong. Rec. S.7885 (June 7, 1995) (prohibiting micromanagement).

^{23/} See MTS and WATS Market Structure, Third Report and Order, 93 F.C.C.2d 241, 278, 282, 290, 296-97 (1983).

^{24/} See, e.g., Third Report and Order, supra, 93 F.C.C.2d at 270 (1983) (the CCL charge "compels large MTS users to subsidize other MTS users"). See also Common Carrier Bureau, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms at 92 (Feb. 23, 1996) (CCL charges "represent subsidies to the degree that high-usage [interstate service] customers pay more . . . than the interstate portion of their subscriber line costs, while low-usage [interstate service] customers pay less than the interstate portion of the cost of those lines"); FCC Access Reform Task Force, Federal Perspectives on Access (continued...)

income individuals who make many interstate calls to subsidize wealthy individuals who do relatively little interstate calling."^{25/} Light interstate telephone callers are not included in Section 254 within the groups to whom the Commission may award subsidies. The LECs must recover their interstate nontraffic-sensitive costs in some other way than through CCL charges.

Not only does the 1996 Act require the FCC to repeal the CCL charge, the Commission itself has recognized repeatedly that sound policy requires the same result. For example, the Commission has found that the CCL charge distorts innovation by complicating the ability of technologies that are not beneficiaries of the subsidy to compete with those that are subsidy beneficiaries and by preferring technologies that do not have to pay the CCL charge over those that do.^{26/} It has found that the CCL charge distorts competition among telecommunications services for the same reasons.^{27/} In view of the problems inherent in the CCL charge, it is not surprising that the FCC has long advocated that the charge be eliminated, but other priorities have intervened to keep the CCL charge in place. Thanks to the 1996 Act, the Commission now should take the action it knows to be correct.^{28/}

^{24/}(...continued)

Charge Reform at 61 (Ap. 30, 1993) ("the . . . CCL [charge] is an admitted subsidy from high volume interstate users to low-volume users").

^{25/} Preparation for Addressing Universal Service Issues, *supra*, at 95.

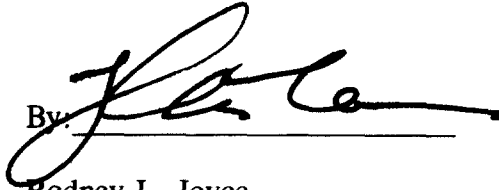
^{26/} See, e.g., MTS and WATS Market Structure, Report and Order, 2 FCC Rcd 2953, 2957 (1987) (CCL charges "divert[] investment away from productive enterprise"); Third Report and Order, *supra*, 93 F.C.C.2d at 275 (CCL charges "distort economy-wide investment decisions").

^{27/} Third Report and Order, *supra*, 93 F.C.C.2d at 243 (the CCL charge "is a primary cause of the inter-service [competitive] disparities").

^{28/} While the Commission should eliminate the requirement that LECs recover any of their interstate nontraffic-sensitive fixed costs through a CCL charge on those who subscribe to interstate access service, it obviously should permit those carriers to recover these costs in some other, more economically rational way. Several different economically rational cost recovery
(continued...)

Respectfully submitted,

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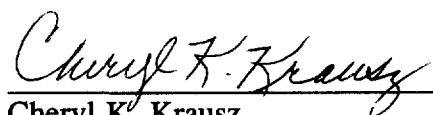
Dated: April 12, 1996

^{28/}(...continued)

mechanism have been suggested in the past. ISA expresses no opinion on which mechanism the Commission should mandate.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the Interactive Services Association was served this 12th day of April, 1996, by first class mail, postage prepaid or by hand (*) to each person on the attached service list.



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